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POLICE DEPARTMENT OF THE CITY OF BURBANK (erroneously sued as an
independent entity named "BURBANK POLICE DEPARTMENT")

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 OMAR RODRIGUEZ; CINDY
14 KARAGIOSIAN-GOMEZ; STEVE
KARAGIOSIAN; ELFEGO RODRIGUEZ;
AND JAMAL CHILDS,
Plaintiffs,
15 v.
16 BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE,
Defendants.

17 AND RELATED CROSS-ACTIONS
18
19
20
21
22

Case No. BC 414602

Location: 37
Judge: The Honorable Joanne O'Donnell

**DEFENDANT CITY OF BURBANK'S
REVISED [PROPOSED] JURY
INSTRUCTIONS RE: PLAINTIFF
KARAGIOSIAN**

File Date: May 28, 2009
Trial Date: March 19, 2012 (Karagiosian)

Discovery Referee: Hon. Diane Wayne, Ret.

CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAR 26 2012

John A. Clarke, Executive Officer/Clerk
BY Glorietta Robinson, Deputy

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Defendant City Of Burbank ("Burbank") respectfully requests the attached revised
3 proposed jury instructions necessitated by the issues involved in this case. Burbank reserves its
4 right to modify, add to, or withdraw these instructions up to and during the time of trial.

5
6 Dated: March 25, 2012

MITCHELL SILBERBERG & KNUPP
Lawrence A. Michaels
Veronica T. von Grabow

7
8 By: 

Veronica T. von Grabow
Attorneys for Defendants and
Cross-Complainant CITY OF BURBANK,
including the POLICE DEPARTMENT OF
THE CITY OF BURBANK (erroneously
sued as an independent entity named
"BURBANK POLICE DEPARTMENT")

100
Preliminary Admonitions (Rev. 12/2009)

Instruction
No. 100

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Instruction
No. 100

You have now been sworn as jurors in this case. I want to impress on you the seriousness and importance of serving on a jury. Trial by jury is a fundamental right in California. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a verdict based on the evidence presented. Before we begin, I need to explain how you must conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and co-workers, spiritual leaders, advisors, or therapists.

This prohibition is not limited to face-to-face conversations. It also extends to all forms of electronic communications. Do not use any electronic device or media, such as a cell phone or smart phone, PDA, computer, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or Web site, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

You may say you are on a jury and how long the trial may take, but that is all. You must not even talk about the case with the other jurors until after I tell you that it is time for you to decide the case.

During the trial you must not listen to anyone else talk about the case or the people involved in the case. You must avoid any contact with the parties, the

Instruction

No. 100 (Continued)

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Instruction

No. 100 (Continued)

lawyers, the witnesses, and anyone else who may have a connection to the case. If anyone tries to talk to you about this case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and report the incident to the court [attendant/bailiff] as soon as you can.

After the trial is over and I have released you from jury duty, you may discuss the case with anyone, but you are not required to do so.

During the trial, do not read, listen to, or watch any news reports about this case. [I have no information that there will be news reports concerning this case.] This prohibition extends to the use of the Internet in any way, including reading any blog about the case or about anyone involved with it or using Internet maps or mapping programs or any other program or device to search for or to view any place discussed in the testimony.

You must decide this case based only on the evidence presented in this trial and the instructions of law that I will provide. Nothing that you see, hear, or learn outside this courtroom is evidence unless I specifically tell you it is. If you receive any information about this case from any source outside of the courtroom, promptly report it to the court [attendant/bailiff]. It is important that all jurors see and hear the same evidence at the same time.

Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. If you do need to view the scene during the trial, you will be taken there as a group under proper supervision.

Instruction

No. 100 (Continued)

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Instruction

No. 100 (Continued)

It is important that you keep an open mind throughout this trial. Evidence can only be presented a piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

Do not concern yourselves with the reasons for the rulings I will make during the course of the trial. Do not guess what I may think your verdict should be from anything I might say or do.

When you begin your deliberations, you may discuss the case only in the jury room and only when all the jurors are present.

You must decide what the facts are in this case. And, I repeat, your verdict must be based only on the evidence that you hear or see in this courtroom. Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

101
Overview of Trial (Rev. 6/2010)

Instruction
No. 101

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Authorities: CACI 101 (as modified).

Instruction
No. 101

To assist you in your tasks as jurors, I will now explain how the trial will proceed. I will begin by identifying the parties to the case. Steve Karagiosian filed this lawsuit. He is called a plaintiff. He seeks damages from the City of Burbank, who is called a defendant.

First, each side may make an opening statement, but neither side is required to do so. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. Also, because it is often difficult to give you the evidence in the order we would prefer, the opening statement allows you to keep an overview of the case in mind during the presentation of the evidence.

Next, the jury will hear the evidence. Mr. Karagiosian will present evidence first. When Mr. Karagiosian is finished, Burbank will have an opportunity to present evidence.

Each witness will first be questioned by the side that asked the witness to testify. This is called direct examination. Then the other side is permitted to question the witness. This is called cross-examination.

Documents or objects referred to during the trial are called exhibits. Exhibits are given a number so that they may be clearly identified. Exhibits are not evidence until I admit them into evidence. During your deliberations, you will be able to look at all exhibits admitted into evidence.

There are many rules that govern whether something will be admitted into evidence. As one side presents evidence, the other side has the right to object and to ask me to decide if the evidence is permitted by the rules. Usually, I will decide

Instruction

No. 101 (Continued)

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Instruction

No. 101 (Continued)

immediately, but sometimes I may have to hear arguments outside of your presence.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments. What the parties say in closing argument is not evidence. The arguments are offered to help you understand the evidence and how the law applies to it.

102
Taking Notes During the Trial (Rev. 12/2007)

Instruction
No. 102

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				Judge	

Authorities: CACI 102.

Instruction
No. 102

You have been given notebooks and may take notes during the trial. Do not take the notebooks out of the courtroom or jury room at any time during the trial. You may take your notes into the jury room during deliberations.

You should use your notes only to remind yourself of what happened during the trial. Do not let your note-taking interfere with your ability to listen carefully to all the testimony and to watch the witnesses as they testify. Nor should you allow your impression of a witness or other evidence to be influenced by whether or not other jurors are taking notes. Your independent recollection of the evidence should govern your verdict, and you should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

[The court reporter is making a record of everything that is said. If during deliberations you have a question about what the witness said, you should ask that the court reporter's records be read to you. You must accept the court reporter's record as accurate.]

At the end of the trial, your notes will be [collected and destroyed/collected and retained by the court but not as a part of the case record/ *[specify other disposition]*].

104
Non-Person Party

Instruction
No. 104

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 104.

Instruction
No. 104

A city, City of Burbank, is a party in this lawsuit. City of Burbank is entitled to the same fair and impartial treatment that you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like "person" or "he" or "she" in these instructions to refer to a party, those instructions also apply to City of Burbank.

106
Evidence (Rev. 2/2010)

Instruction
No. 106

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 106.

Instruction
No. 106

Sworn testimony, documents, or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you see or hear during the trial. You may not consider as evidence anything that you see or hear when court is not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys will talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggests that it is true. However, the attorneys for both sides can agree that certain facts are true. This agreement is called a "stipulation." No other proof is needed and you must accept those facts as true in this trial.

Each side has the right to object to evidence offered by the other side. If I do not agree with the objection, I will say it is overruled. If I overrule an objection, the witness will answer and you may consider the evidence. If I agree with the objection, I will say it is sustained. If I sustain an objection, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness has already answered, you must ignore the answer.

An attorney may make a motion to strike testimony that you have heard. If I grant the motion, you must totally disregard that testimony. You must treat it as

Instruction

No. 106 (Continued)

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="border-bottom: 1px solid black; display: inline-block; width: 80%;"></div> Judge			
Withdrawn					

Instruction

No. 106 (Continued)

though it did not exist.

107
Witnesses (Rev. 4/2007)

Instruction
No. 107

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 107.

Instruction
No. 107

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified

Instruction

No. 107 (Continued)

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
_____ Judge					

Instruction

No. 107 (Continued)

untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status.

112
Questions From Jurors (Rev. 4/2009)

Instruction

No. 112

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 112.

Instruction

No. 112

If, during the trial, you have a question that you believe should be asked of a witness, you may write out the question and send it to me through my courtroom staff. I will share your question with the attorneys and decide whether it may be asked.

Do not feel disappointed if your question is not asked. Your question may not be asked for a variety of reasons. For example, the question may call for an answer that is not allowed for legal reasons. Also, you should not try to guess the reason why a question is not asked or speculate about what the answer might have been. Because the decision whether to allow the question is mine alone, do not hold it against any of the attorneys or their clients if your question is not asked.

Remember that you are not an advocate for one side or the other. Each of you is an impartial judge of the facts. Your questions should be posed in as neutral a fashion as possible. Do not discuss any question asked by any juror with any other juror until after deliberations begin.

113
Bias (New 6/2010)

Instruction

No. 113

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 113.

Instruction

No. 113

Each one of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party or witness.

Bench Conferences and Conferences in Chambers (New 12/2010)

Instruction

No. 114

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
_____ Judge					

Authorities: CACI 114.

Instruction

No. 114

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess to discuss matters outside of your presence. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence. Do not be concerned about our discussions or try to guess what is being said.

I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of my view of the evidence.

Obligation to Prove--More Likely True Than Not True (Rev. 2/2005)

Instruction

No. 200

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
_____ Judge					

Instruction

No. 200

A party must persuade you, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true. This is referred to as "the burden of proof."

After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence.

In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove something need prove only that it is more likely to be true than not true.

Deposition as Substantive Evidence

Instruction

No. 208

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
_____ Judge					

Authorities: CACI 208.

Instruction

No. 208

During the trial, you heard testimony read from a deposition. A deposition is the testimony of a person taken before trial. At a deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider the deposition testimony that was read to you in the same way as you consider testimony given in court.

212
Statements of a Party Opponent

Instruction
No. 212

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 212.

Instruction
No. 212

A party may offer into evidence any oral or written statement made by an opposing party outside the courtroom.

When you evaluate evidence of such a statement, you must consider these questions:

1. Do you believe that the party actually made the statement? If you do not believe that the party made the statement, you may not consider the statement at all.
2. If you believe that the statement was made, do you believe it was reported accurately?

You should view testimony about an oral statement made by a party outside the courtroom with caution.

215
Exercise of a Communication Privilege

Instruction

No. 215

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 215.

Instruction

No. 215

People have a legal right not to disclose what they told their attorney in confidence because the law considers this information privileged. People may exercise this privilege freely and without fear of penalty.

You must not use the fact that a witness exercised this privilege to decide whether he or she should be believed. Indeed, you must not let it affect any of your decisions in this case.

219
Expert Witness Testimony

Instruction

No. 219

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 219.

Instruction

No. 219

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

- a. The expert's training and experience;
- b. The facts the expert relied on; and
- c. The reasons for the expert's opinion.

Experts—Questions Containing Assumed Facts

Instruction

No. 220

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 220.

Instruction

No. 220

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called “hypothetical questions.”

In determining the weight to give to the expert's opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

221
Conflicting Expert Testimony

Instruction

No. 221

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 221.

Instruction

No. 221

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

5000
Duties of the Judge and Jury (Rev 12/2009)

Instruction

No. 5000

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judge

Instruction

No. 5000

Members of the jury, you have now heard all the evidence [and the closing arguments of the attorneys]. [The attorneys will have one last chance to talk to you in closing argument. But before they do, it] [It] is my duty to instruct you on the law that applies to this case. You must follow these instructions [as well as those that I previously gave you]. You will have a copy of my instructions with you when you go to the jury room to deliberate. [I have provided each of you with your own copy of the instructions.] [I will display each instruction on the screen.]

You must decide what the facts are. You must consider all the evidence and then decide what you think happened. You must decide the facts based on the evidence admitted in this trial. Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. [Do not read, listen to, or watch any news accounts of this trial.] You must not let bias, sympathy, prejudice, or public opinion influence your decision.

I will now tell you the law that you must follow to reach your verdict. You must follow the law exactly as I give it to you, even if you disagree with it. If the attorneys [have said/say] anything different about what the law means, you must follow what I say. In reaching your verdict, do not guess what I think your verdict should be from something I may have said or done.

Pay careful attention to all the instructions that I give you. All the

5000
Directions of the Judge and Jury (Rev 12/2009)

Instruction

No. 5000 (Continued)

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
_____ Judge					

Instruction

No. 5000 (Continued)

instructions are important because together they state the law that you will use in this case. You must consider all of the instructions together.

After you have decided what the facts are, you may find that some instructions do not apply. In that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

If I repeat any ideas or rules of law during my instructions, that does not mean that these ideas or rules are more important than the others. In addition, the order in which the instructions are given does not make any difference.

[Most of the instructions are typed. However, some handwritten or typewritten words may have been added, and some words may have been deleted. Do not discuss or consider why words may have been added or deleted. Please treat all the words the same, no matter what their format. Simply accept the instruction in its final form.]

2521A**Hostile Work Environment Harassment [National Origin]--Conduct Directed at Plaintiff--
Essential Factual Elements--Employer or Entity Defendant (Gov. Code, § 12940(j)) (Rev.**Instruction
No. 2521A

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
Judge					

Authorities: CACI 2521A (as modified).

Instruction
No. 2521A

Mr. Karagiosian's claim is that he was subjected to harassment based on his Armenian national origin, causing a hostile or abusive work environment. To establish this claim, Mr. Karagiosian must prove all of the following:

1. That Mr. Karagiosian timely filed a verified complaint with the Department of Fair Employment and Housing ("DFEH");
2. That Mr. Karagiosian was subjected to unwelcome harassing conduct because of his Armenian national origin;
3. That the harassing conduct was severe or pervasive;
4. That a reasonable person in Mr. Karagiosian's circumstances would have considered the work environment to be hostile or abusive;
5. That Mr. Karagiosian considered the work environment to be hostile or abusive;
6. That City of Burbank or its supervisors or agents knew or should have known of the conduct and failed to take immediate and appropriate corrective action;
7. That Mr. Karagiosian was harmed; and
8. That the conduct was a substantial factor in causing Mr. Karagiosian's harm.

2523
"Harassing Conduct" Explained

Instruction
No. 2523

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Instruction
No. 2523

Harassing conduct may include:

- a. Verbal harassment, such as demeaning comments, slurs, or threats; or
- b. Visual harassment, such as offensive posters, objects, cartoons, or drawings.

430
Causation: Substantial Factor (Rev. 12/2009)

Instruction
No. 430

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Instruction
No. 430

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.

**2508 (modified)
Continuing Violation**

Instruction
No. 2508

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judg

Authorities: Cal. Gov't Code §§ 12940 *et seq.*; *Richards v. CH2M Hill, Inc.*, 26 Cal. 4th 798, 823 (2001).

Instruction
No. 2508

Burbank contends that Mr. Karagiosian's lawsuit may not proceed because Mr. Karagiosian did not timely file a complaint with the Department of Fair Employment and Housing ("DFEH"). A complaint is timely if it was filed within one year of the date on which the alleged harassing conduct occurred.

Mr. Karagiosian filed a complaint with the DFEH on May 27, 2009. Burbank claims that its alleged unlawful harassing conduct that triggered the requirement to file a complaint occurred before May 27, 2008. Mr. Karagiosian claims that Burbank's alleged unlawful harassing conduct was a continuing violation so that the requirement to file a complaint was triggered no earlier than May 27, 2008.

The alleged harassing conduct is considered to form a continuing violation only for as long as all of the following three conditions continue to exist:

1. Conduct occurring before May 27, 2008 was similar in kind to the conduct occurring on or after May 27, 2008;
2. The conduct was reasonably frequent; and
3. The conduct had not yet become permanent.

"Permanent" in this context means that the conduct has stopped..

2526 (modified)
Avoidable Consequences Doctrine

Instruction

No. 2526

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: *State Dept. of Health Services v. Superior Court*, 31 Cal. 4th 1026, 1043-1044 (2003).

Instruction

No. 2526

Burbank claims that Mr. Karagiosian could have avoided some or all of any harm with reasonable effort. To succeed, Burbank must prove all of the following:

1. That Burbank had harassment complaint procedures in place and took reasonable steps to prevent and correct workplace harassment;
2. That Mr. Karagiosian unreasonably failed to use Burbank's harassment complaint procedures; and
3. That the reasonable use of Burbank's procedures would have prevented some or all of any harm caused to Mr. Karagiosian.

You should consider the reasonableness of Mr. Karagiosian's actions in light of the circumstances facing him at the time, including his ability to report the conduct without facing undue risk, expense or humiliation.

If you decide that Burbank has proven that Mr. Karagiosian unreasonably failed to use Burbank's harassment complaint procedures, you should not include in your award of damages the amount of damages that Mr. Karagiosian could have avoided.

Introduction to Tort Damages--Liability Contested

Instruction

No. 3900

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
_____ Judge					

Authorities: CACI 3900.

Instruction

No. 3900

If you decide that Mr. Karagiosian has proved his claim against Burbank, you also must decide how much money will reasonably compensate Mr. Karagiosian for the harm. This compensation is called "damages."

The amount of damages must include an award for each item of harm that was caused by Burbank's wrongful conduct, even if the particular harm could not have been anticipated.

Mr. Karagiosian does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

3905
Items of Noneconomic Damage

Instruction
No. 3905

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Authorities: CACI 3924.

Instruction
No. 3905

The following are the specific items of noneconomic damages claimed by
Mr. Karagiosian:

Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage) (Rev 12/2009)

Instruction
No. 3905A

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
_____ Judge					

Authorities: CACI 3905A.

Instruction
No. 3905A

Past and future physical pain/mental suffering/loss of enjoyment of life/inconvenience/grief/anxiety/humiliation/emotional distress.

No fixed standard exists for deciding the amount of these noneconomic damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

To recover for future non-economic damages, Mr. Karagiosian must prove that he is reasonably certain to suffer that harm.

For future non-economic damages, determine the amount in current dollars paid at the time of judgment that will compensate Mr. Karagiosian for future pain and suffering. This amount of noneconomic damages should not be further reduced to present cash value because that reduction should only be performed with respect to economic damages.

3924
No Punitive Damages

Instruction
No. 3924

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
		_____ Judge			

Authorities: CACI 3924.

Instruction
No. 3924

You must not include in your award any damages to punish or make an example of Burbank. Such damages would be punitive damages, and they cannot be a part of your verdict. You must award only the damages that fairly compensate Mr. Karagiosian for his loss.

Arguments of Counsel Not Evidence of Damages

Instruction

No. 3925

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
_____ Judge					

Authorities: CACI 3925.

Instruction

No. 3925

The arguments of the attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial.

Jurors Not to Consider Attorney Fees and Court Costs (New 6/2006)

Instruction

No. 3964

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
_____ Judge					

Authorities: CACI 3964.

Instruction

No. 3964

You must not consider, or include as part of any award, attorney fees or expenses that the parties incurred in bringing or defending this lawsuit.

5012
Introduction to Special Verdict Form (Rev 12/2009)

Instruction

No. 5012

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Instruction

No. 5012

I will give you [a] verdict form[s] with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form[s] carefully. You must consider each question separately. Although you may discuss the evidence and the issues to be decided in any order, you must answer the questions on the verdict form[s] in the order they appear. After you answer a question, the form tells you what to do next. All 12 of you must deliberate on and answer each question. At least 9 of you must agree on an answer before all of you can move on to the next question. However, the same 9 or more people do not have to agree on each answer.

When you have finished filling out the form[s], your presiding juror must write the date and sign it at the bottom [of the last page] and then notify the [bailiff/clerk/court attendant] that you are ready to present your verdict in the courtroom.

SPECIAL INSTRUCTION

Redactions

Special Instructions	
No. 1	

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities:

Instruction

No. 1

Some documents presented in this case have been redacted to remove certain private information from them. Do not draw any conclusions from the redactions or attempt to guess what information may have been redacted.

SPECIAL INSTRUCTION

Failure to File Verified Administrative Complaint (Gov. Code § 129609(b))

Special Instructions

No. 2

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judge

Authorities: Cal. Govt. Code § 12960(b); *Okoli v. Lockheed Technical Operations Co.*, 36 Cal. App. 4th 1607, 1613 (1995); *Blum v. Superior Court*, 141 Cal. App. 4th 418, 428 (2006).

Instruction

No. 2

In order to sustain the claim, Mr. Karagiosian must have filed a verified administrative complaint with the Department of Fair Employment and Housing ("DFEH"). The DFEH complaint must have been verified under penalty of perjury by Mr. Karagiosian personally or by Mr. Karagiosian's attorney. If Mr. Karagiosian's attorney verified the DFEH complaint, then the attorney must have identified him or herself as the person verifying the complaint.

SPECIAL INSTRUCTION

Objectively And Subjectively Hostile or Abusive

Special Instructions					
No. 3					
Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: Model Jury Instructions – Emp. Litigation Section 1.04(3) (as modified)

Instruction

No. 3

You must determine not only that the environment is one that Mr. Karagiosian himself subjectively perceived to be hostile or abusive, but also that it is one that a reasonable person would likewise find hostile or abusive. This must be evaluated from the perspective of a reasonable person, not from the perspective of an overly sensitive person.

SPECIAL INSTRUCTION**"Because of" National Origin****Special Instructions**

No. 4

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judge

Authorities: California Govt. Code Section 12940(j)(1); *Lyle v. Warner Bros. Television Productions*, 38 Cal. 4th 264, 279-283, 286-289 (2006)

Instruction

No. 4

You should not consider any conduct to be harassing conduct unless that conduct was because of Mr. Karagiosian's Armenian national origin.

A harassment claim is not established where a supervisor or coworker simply uses crude or inappropriate language. The Fair Employment and Housing Act, which prohibits harassment, is not a "civility code" and is not designed to rid the workplace of vulgarity. It does not outlaw coarse and vulgar language or conduct that merely offends. The burden is on Mr. Karagiosian to prove that any conduct which he claims was harassing conduct was because he is Armenian.

SPECIAL INSTRUCTION**More Than Trivial Conduct****Special Instructions**

No. 5

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: Use Note for CACI 2524; *Etter v. Veriflo Corp.*, 67 Cal. App. 4th 457, 465-467 (1998); *Fisher v. San Pedro Peninsula Hospital*, 214 Cal. App. 3d 590, 609-610 (1989).

Instruction

No. 5-R

In determining what constitutes "severe or pervasive" harassment, the acts of harassment cannot be occasional, isolated, sporadic, or trivial. Rather, Mr. Karagiosian must prove a concerted pattern of harassment of a repeated, routine or generalized nature.

SPECIAL INSTRUCTION**Immediate And Appropriate Corrective Action**

Special Instructions	
No.	6

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				Judge	

Authorities: *Bradley v. Department of Corrections & Rehabilitation*, 158 Cal. App. 4th 1612, 1630-1631 (2008); *Swenson v. Potter*, 271 F.3d 1184, 1192 (9th Cir. Cal. 2001); Use Note for CACI 2521A; *Carrisales v. Dept. of Corrections*, 21 Cal. 4th 1132, 1136 (1999).

Instruction**No. 6**

Immediate corrective action is required when the employer becomes aware or reasonably should become aware of the conduct, for example when the victim or someone else informs the employer.

Appropriate corrective action means action that is reasonably calculated to end the harassment.

SPECIAL INSTRUCTION**Evidence of Harassment****Special Instructions**

No. 7

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judge

Authorities: *Lyle v. Warner Brothers Television Productions*, 38 Cal. 4th 264, 291 (2006); *Carter v. Ball*, 33 F.3d 450, 461-62 (4th Cir. 1994); *Beyda v. City of Los Angeles*, 65 Cal.App.4th 511, 518-522 (1998)

Instruction

No. 7

General allegations which are not substantiated by accounts of specific dates, times or circumstances do not suffice to establish an actionable claim of harassment. Likewise, mere workplace gossip about harassment of others, and of a plaintiff's awareness of that harassment, is not a substitute for proof.

SPECIAL INSTRUCTION

Failure to Prevent – Harassment Must Have Occurred

Special Instructions	
No. 8	

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: *Trujillo v. N. County Transit Dist.*, 63 Cal. App. 4th 280, 289 (1998).

Instruction

No. 8

If you find in favor of Burbank on Mr. Karagiosian's claim that he was harassed you must also find in favor of Burbank on Mr. Karagiosian's claim for failure to prevent harassment.

SPECIAL INSTRUCTION**Damages Generally****Special Instructions**

No. 9

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judge

Authorities

Instruction

No. 9

I am turning now to the question of damages and what can be considered in determining an award of money in this case. By including damages in these instructions, I do not wish to suggest or imply anything about whether liability has been proved or about whether damages have been proved in this case.

SPECIAL INSTRUCTION**No Damages for Conduct Outside the Statute of Limitations**

Special Instructions	
No.	10

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: *Fisher v. San Pedro Peninsula Hospital*, 214 Cal. App.3d 590, 614, fn. 9 (1989).

Instruction**No. 10**

Mr. Karagiosian cannot recover any damages for any conduct that occurred outside the statute of limitations period. Accordingly, Mr. Karagiosian cannot recover damages for conduct that occurred prior to May 27, 2008.

SPECIAL INSTRUCTION

Damages Cannot Be Speculative

Special Instructions

No. 11

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judge

Authorities: *Piscitelli v. Friedenber*g, 87 Cal. App. 4th 953, 989 (2001); *Clemente v. State of California*, 40 Cal. 3d 202, 219 (1985).

Instruction

No. 11

Damages which are speculative, remote, imaginary, contingent, or merely possible cannot serve as a legal basis for recovery. However, recovery is allowed if claimed benefits are reasonably certain to have been realized but for the wrongful act of the opposing party.

SPECIAL INSTRUCTION

No Emotional Distress Damages Resulting From the Litigation

Special Instructions

No. 12

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judge

Authorities: Cal. Civil Code §47; *Kachig v. Boothe*, 22 Cal. App. 3d 626, 640 (1971) *Silberg v. Anderson*, 50 Cal. 2d 205 (1990).

Instruction

No. 12

Mr. Karagiosian cannot recover for any alleged emotional distress resulting from his filing this lawsuit and participating in the litigation process.

SPECIAL INSTRUCTION

No Emotional Distress Damages Not Caused by Defendant

Special Instructions

No. 13

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities:

Instruction

No. 13

Mr. Karagiosian cannot recover damages for any emotional distress that was not caused by Burbank.

SPECIAL INSTRUCTION

All Instructions Not Necessarily Applicable

Special Instructions	
No.	14

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				Judge	

Authorities:

Instruction

No. 14

The purpose of the Court's instructions is to instruct you as to the applicable law so that you may arrive at a just and lawful verdict. Whether some instructions will apply will depend upon what you find to be the facts. Even though I have instructed you on various subjects, including damages, you must not treat the instruction as indicating the Court's opinion on how you should decide any issue in this case, or as to which party is entitled to your verdict.

SPECIAL INSTRUCTION
Incidents Of Conduct Which May Be Considered

Special Instructions

No. 15

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities:

Instruction

No. 15

In considering whether the alleged harassing conduct is “severe or pervasive” you may only consider incidents of conduct that satisfy all of the following three requirements, on which the Court has previously instructed you:

- a. The incident must be “harassing.”
- b. The incident must be because of Mr. Karagiosian’s Armenian national origin.
- c. The incident must have occurred after May 27, 2008, or constitute part of a “continuing violation.”

Incidents that meet only one or two of the above requirements must be disregarded in determining whether the alleged harassing conduct is “severe or pervasive.”

physically threatening or humiliating, or a mere offensive utterance; and 4. Whether the conduct unreasonably interfered with Mr. Karagiosian’s work performance.

INDEX OF JURY INSTRUCTIONS REQUESTED BY DEFENDANT

Case Name: *Karagiosian. v. Burbank Police Department, et al.*
Case Number: BC 414602
Trial Date: March 19, 2012

Instruction No.	Title	Given As Requested	Given As Modified	Refused	Withdrawn
CACI 100	Preliminary Admonitions				
CACI 101	Overview of Trial				
CACI 102	Taking Notes During the Trial				
CACI 104	Non-Person Party				
CACI 106	Evidence				
CACI 107	Witnesses				
CACI 112	Questions From Jurors				
CACI 113	Bias				
CACI 114	Bench Conferences and Conferences in Chambers				
CACI 200	Obligation to Prove--More Likely True Than Not True				
CACI 208	Deposition as Substantive Evidence				
CACI 212	Statements of a Party Opponent				
CACI 215	Exercise of a Communication Privilege				
CACI 219	Expert Witness Testimony				
CACI 220	Experts—Questions Containing Assumed Facts				
CACI 221	Conflicting Expert Testimony				
CACI 5000	Duties of the Judge and Jury				
CACI 2521A	Hostile Work Environment Harassment [National Origin]--Conduct Directed at Plaintiff--Essential Factual Elements--Employer or Entity Defendant (Gov. Code, § 12940(j))				
CACI 2523	"Harassing Conduct" Explained				

Instruction No.	Title	Given As Requested	Given As Modified	Refused	Withdrawn
CACI 2626 (modified)	Avoidable Consequences Doctrine				
CACI 430	Causation: Substantial Factor				
CACI 2508 (modified)	Continuing Violation				
CACI 3900	Introduction to Tort Damages--Liability Contested				
CACI 3905	Items of Noneconomic Damage				
CACI 3905A	Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)				
CACI 3924	No Punitive Damages				
CACI 3925	Arguments of Counsel Not Evidence of Damages				
CACI 3964	3964 Jurors Not to Consider Attorney Fees and Court Costs (New 6/2006)				
CACI 5012	Introduction to Special Verdict Form				
Special Instruction 1	Redactions				
Special Instruction 2	Failure to File Verified Administrative Complaint (Gov. Code § 129609(b))				
Special Instruction 3	Objectively And Subjectively Hostile Or Abusive				
Special Instruction 4	"Because of" National Origin				
Special Instruction 5	More Than Trivial Conduct				
Special Instruction 6	Prompt And Appropriate Corrective Action				

Instruction No.	Title	Given As Requested	Given As Modified	Refused	Withdrawn
Special Instruction 7	Evidence of Harassment				
Special Instruction 8	Failure to Prevent – Harassment Must Have Occurred				
Special Instruction 9	Damages Generally				
Special Instruction 10	No Damages for Conduct Outside the Statute of Limitations				
Special Instruction 11	Damages Cannot Be Speculative				
Special Instruction 12	No Emotional Distress Damages Resulting From the Litigation				
Special Instruction 13	No Emotional Distress Damages Not Caused by Defendants				
Special Instruction 14	All Instructions Not Necessarily Applicable				
Special Instruction 15	Incidents of Conduct Which May Be Considered				

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California.

4 I am over the age of 18, and not a party to the within action; my business address is , .

5 On March 26, 2012, I served the foregoing document(s) described as **DEFENDANT**
6 **CITY OF BURBANK'S REVISED [PROPOSED] JURY INSTRUCTIONS RE:**
7 **PLAINTIFF KARAGIOSIAN** which was enclosed in sealed envelopes addressed as follows,
and taking the action described below:

8 Solomon E. Gresen, Esq., seg@rglawyers.com
9 Steven V. Rheuban, Esq., svr@rglawyers.com
10 Law Offices of Rheuban & Gresen
11 Los Angeles County Superior Court
12 111 North Hill Street
Los Angeles, CA 90012
Attorneys for Plaintiffs Omar Rodriguez, Cindy
Guillen-Gomez, Steve Karagiosian, Elfego
Rodriguez, and Jamal Childs

13 ☒ **BY PERSONAL SERVICE:** I hand delivered such envelope(s):

14 ☒ to the addressee(s);

15 ☐ to the receptionist/clerk/secretary in the office(s) of the addressee(s).

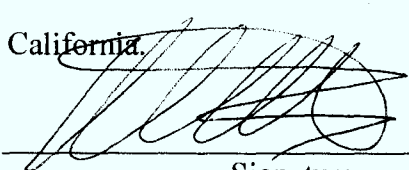
16 ☐ by leaving the envelope in a conspicuous place at the office of the addressee(s)
17 between the hours of 9:00 a.m. and 5:00 p.m.

18 I declare under penalty of perjury under the laws of the State of California that the above is
true and correct.

19 Executed on March 26, 2012, at Los Angeles, California.

20 _____
21 Veronica von Grabow

22 Printed Name

23 
24 _____
25 Signature